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3:02-CV-00142 GABLE V. XO COMMUNICATIONS

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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TRACY GABLE, on behalf of himself and
all similarly situated persons,

Plaintiffs,

vs.

XO COMMUNICATIONS, INC.; DANIEL
F. AKERSON; NATHANIEL A. DAVID;
CRAIG O. McCaw, et al.,

Defendants.

CASE NO. 02-0142-IEG (RBB)

CLASS ACTION

**ORDER (1) GRANTING
DEFENDANTS' MOTION TO
TRANSFER LAWSUIT
PURSUANT TO 28 U.S.C. §
1404(a); AND (2) DENYING
PLAINTIFF'S MOTION TO
APPOINT THE XO
COMMUNICATIONS
SHAREHOLDER
REPRESENTATIVE GROUP AS
LEAD PLAINTIFF**

[Doc No. 4]

On February 4, 2002, plaintiff in the above-captioned matter filed a motion to appoint the XO Communications Shareholder Representative Group as lead plaintiff. [Doc. No. 4.] On April 4, 2002, defendants Daniel F. Akerson, Nathaniel A. David, and Craig O. McCaw (collectively, "defendants") filed a motion to transfer this litigation to the Eastern District of Virginia pursuant to 28 U.S.C. § 1404(a).¹ [Doc. No. 13.]

¹The Court takes judicial notice of In re XO Communications, Inc. Securities Litigation, Civil Case No. 01-CV-1832 (J. Brinkema presiding), a pending case in the U.S. District Court for the Eastern District of Virginia, filed on December 4, 2001. Various plaintiffs have commenced at least

02-CV-0142-IEG(RBB)

ENTERED ON


5-7-02

Plaintiff filed no opposition to defendants' motion to transfer this case to the Eastern District of Virginia. By local rule, plaintiff's failure to oppose defendants' motion constitutes a consent to the granting of the motion. S.D. Cal. Local Civ. R. 7.1.f.3.c. Furthermore, the Court has carefully considered defendants' motion and supporting papers. On the basis of this review, the Court finds that transfer of this lawsuit is appropriate (1) for the convenience of the parties and witnesses, and (2) in the interests of judicial economy and consistency. Consequently, the Court hereby **GRANTS** defendants' motion to transfer this lawsuit, and **TRANSFERS** this entire lawsuit to the Eastern District of Virginia pursuant to 28 U.S.C. 1404(a).

Moreover, in the Eastern District consolidated action, Judge Brinkema completed, on February 15, 2002, selection of lead plaintiff pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(i) to represent the XO shareholder class. Accordingly, in the instant case, the Court hereby **DENIES** plaintiff's motion to appoint the XO Communications Shareholder Representative Group as lead plaintiff.

IT IS SO ORDERED.

Dated: May 6, 2002


 IRMA E. GONZALEZ
 United States District Judge

cc: Magistrate Judge Ruben B. Brooks
 All Parties

18 different securities fraud cases against XO Communications in the Eastern District of Virginia. On January 23, 2002, Judge Brinkema of the Eastern District issued an order consolidating the 18 Eastern District cases into Case No. 01-CV-1832. *Id.*, Doc. No. 15. Between February 1, 2002 and February 4, 2002, at least three groups of plaintiffs in the consolidated case filed motions for appointment as lead plaintiff and for approval of lead counsel. *Id.*, Doc. Nos. 17, 20, 24. On February 15, 2002, Judge Brinkema appointed the Gillin Group as lead plaintiff in the consolidated cases, and approved the lead plaintiffs' selection of the Cohen, Milstein firm as lead class counsel. *Id.*, Doc. No. 33.

UNITED STATES DISTRICT COURT

Southern District Of California
Office Of The Clerk
880 Front Street, Room 4290
San Diego, California 92101-8900
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W. Samuel Hamrick, Jr.
Clerk of Court

Matt Dykman
Chief Deputy

May 7, 2002

Office of the Clerk
United States District Court - Eastern District of Virginia
PO BOX 21449
Alexandria, VA 22320

Re: Tracy Gable v XO Communications. et al., Case No. 02-142-IEG (RBB)

Dear Sir or Madam:

Pursuant to Order transferring the above-entitled action to your District, we are transmitting herewith our entire original file (excepting said Order).

Enclosed are a certified copy of our Docket and of the Order transferring the action, the originals of which we are retaining.

Please acknowledge receipt on the copy of this letter and return. Thank you.

Sincerely yours,

W. Samuel Hamrick, Jr.
Clerk of Court

By: CAROLYN GOBBI
Carolyn Gobbi, Deputy

Copy to Attorney for Plaintiffs:
Copy to Attorney for Defendants:

RECEIVED ITEMS DESCRIBED

THIS DATE OF _____
AND ASSIGNED CASE NUMBER _____

CLERK, U.S. DISTRICT COURT

By: _____, Deputy